

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7440

Petition of Entergy Nuclear Vermont Yankee, )  
LLC, and Entergy Nuclear Operations, Inc., for )  
amendment of their Certificates of Public Good )  
and other approvals required under 10 V.S.A. )  
§§ 6501-6504 and 30 V.S.A. §§ 231(a), 248 & )  
254, for authority to continue after March 21, )  
2012, operation of the Vermont Yankee Nuclear )  
Power Station, including the storage of spent- )  
nuclear fuel )

Order entered: 9/26/2008

**PROCEDURAL ORDER RE: PROTECTIVE AGREEMENT**

Entergy Nuclear Vermont Yankee, LLC ("EVY"), and Entergy Nuclear Operations, Inc. ("ENO")(EVY and ENO are herein referenced collectively as "Entergy VY," "Company" or "Companies"), have information that they allege is of a confidential and proprietary nature and that they have been, or may be, asked to provide to the Public Service Board ("Board"), the Vermont Department of Public Service ("Department") and certain other parties, the names of which are set forth on the signature pages and approved schedules to the Protective Agreement, as defined below (Entergy VY, the Department and each other party will be sometimes referenced herein, where the context requires, as a "Party" and collectively as the "Parties") both in connection with this Docket and in connection with the Comprehensive Vertical Audit and Reliability Assessment, as set forth in No. 189 of the Acts of 2008 by the General Assembly of the State of Vermont ("CVA").

To preserve the confidentiality of that information while facilitating disclosure of information in this proceeding, the Parties have entered into a Protective Agreement, dated as of August 13, 2008, attached hereto (the "Protective Agreement"). Schedules Ia and Ib of the Protective Agreement, as may be amended in accordance with the terms of the Protective Agreement, describe information that Entergy VY alleges may result in financial or competitive harm to Entergy VY, Entergy Corporation or its Affiliates if disclosed on the public record

(which information is stated as Schedule Ia and Schedule Ib, as amended from time to time, and is herein referenced as the "Allegedly Confidential Information").

Pursuant to that Protective Agreement and to preserve the confidentiality of Allegedly Confidential Information, and to protect all information disclosed to the Audit Inspection Team, as that term is defined in the Protective Agreement and in the CVA, Entergy VY, the Department and such other parties that have executed the Protective Agreement, request that the Board issue a Protective Order implementing the terms and procedures of the Protective Agreement. No party opposes the issuance of the Protective Order.

The Board finds good cause to order implementation of the Protective Agreement as it pertains to information exchanged as part of this docket and that such Agreement is appropriate, useful and reasonable, but with two clarifications. First, our approval of the Protective Agreement does not, however, extend to material exchanged as part of the CVA. As noted above, the CVA is being conducted pursuant to Act 189, enacted earlier this year. The audit responsibilities under that statute rest with the Department and with the public oversight panel established under Section 6 of the legislation. The Board has no role in the conduct of the CVA or in the oversight. The only Board function would be to consider the results of the CVA if one or more parties enters them into evidence in this proceeding. As a result, we conclude that it would be inappropriate for us to enter a Protective Order to apply to information being exchanged as a part of a separate process in which we have no involvement or oversight. Moreover, the moving parties have not shown any basis for the Board to assert authority or jurisdiction over the exchange of Allegedly Confidential Information during the CVA.

We recognize the likelihood that the CVA will be entered into evidence in this proceeding (under the current schedule, that would occur in December). At that time, any confidential material exchanged in formal or informal discovery would fall within the scope of this Protective Order. In addition, the Protective Order would clearly apply to any information related to the CVA that is exchanged as a result of discovery in this proceeding. However, we see no basis on which we can extend the Protective Order to apply to other Allegedly Confidential Information that may be made available to the Audit Team or the public oversight panel.

Second, today's Protective Order shall govern only the protection of documents and information provided in discovery. If a Party wishes to keep confidential any material that is proffered for inclusion in the evidentiary record, that Party must present a properly supported motion for protection of that material.

Therefore, IT IS HEREBY ORDERED that Allegedly Confidential Information provided by the Company pursuant to the Protective Agreement shall be treated in this proceeding as follows:

1. The Protective Agreement, filed with the Board on September 9, 2008, and attached hereto, is approved and adopted as part of this Order, except as modified herein. Specifically, the Protective Order does not apply to information exchanged as part of the CVA.
2. For each document or information response that the Company wishes to treat as Allegedly Confidential Information, the Company must submit a detailed, document-specific (or information-specific) averment of the basis for such treatment, which addresses the following, to the extent that the Company relies upon that factor as the basis for an assertion of confidentiality:
  - a. Identification of the specific document or information for which confidential treatment is sought;
  - b. Explanation of the degree to which the document or information contains a trade secret or other commercially sensitive information, or is privileged;
  - c. For documents and information alleged to contain trade secrets or other commercially sensitive information,
    - i. the extent the information is known outside the Company,
    - ii. the extent the information is known by employees and independent contractors,
    - iii. the measures taken to guard secrecy,
    - iv. the value of the information to the Company and competitors,
    - v. the amount of effort or money used to develop the information,
    - vi. the ease or difficulty of others in acquiring or duplicating the information, and
    - vii. an explanation of how disclosure of the information could result in cognizable harm sufficient to warrant a protective order;
  - d. Justification of the period during which the Company asserts that material should not be available for public disclosure;

- e. Explanation of whether partial disclosure, or disclosure of redacted versions, can adequately protect the Allegedly Confidential Information; and
- f. Any other information that the party seeking confidential treatment believes may be useful in assessing whether the document or information should remain confidential.

3. If a party wishes to prefile any testimony or exhibits that include or otherwise disclose Allegedly Confidential Information, that party must give five business days' advance notice to counsel for the party or other person that designated the information as Allegedly Confidential. Any party may move the Board for an order that the testimony or exhibits be filed under seal or under other conditions to prevent unnecessary disclosure.

a. If such motion is filed within the five-business days' advance notice period, the proponent of the testimony and exhibits shall place them in a sealed record by filing such documents in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the contents (exhibit, report, etc.) and a statement that it shall not be opened or released from custody of the Clerk of the Board except by order of the Board or Hearing Officer. Notwithstanding such a statement, the members of the Board, and any employee or consultant specifically authorized by the Board to assist the Board in this proceeding and any Hearing Officer appointed to this Docket, may have access to such sealed Allegedly Confidential Information, but shall not disclose the contents of any such sealed information to any person who has not agreed to be bound by the Protective Agreement. The Board will then determine whether the proffered evidence should continue to be treated as confidential information and, if so, what protection, if any, may be afforded to such information.

b. If no such motion is filed by the end of the five-business days' advance notice period, the testimony and exhibits may be filed as a document available for public access.

4. At any hearing or conference in this proceeding, no witness may be questioned with respect to any Allegedly Confidential Information unless examining counsel has provided advance notice to counsel for any party or other person that designated the information as allegedly confidential. To the extent possible, such notice shall be given prior to the commencement of the hearing or conference. Any party may move the Board for an order that the testimony be received *in camera* or under other conditions to prevent unnecessary disclosure. If such motion is made, the Board will then determine whether the testimony should be received *in camera* or subject to other protection.

5. Upon receipt of an executed Protective Agreement signature form, that is, either Schedule IIa or IIb to the Protective Agreement, counsel for the Company shall forward one copy of the form to the Clerk of the Board.

6. All documents filed with the Board that are subject to the Protective Agreement as Allegedly Confidential Information and any documents that discuss or reveal documents that constitute Allegedly Confidential Information shall be placed in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the contents (discovery response, report, etc.) and a statement that it shall not be opened or released from custody of the Clerk of the Board except by order of the Board. Notwithstanding such a statement, the members of the Board, and any employee or consultant specifically authorized by the Board to assist the Board in this proceeding and any Hearing Officer appointed to the Docket, may have access to such sealed Allegedly Confidential Information, but shall not disclose the contents of any such sealed information to any person who has not agreed to be bound by the Protective Agreement.

7. The Board will retain jurisdiction to make such amendments, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement. Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

8. The Board cautions the parties that there must be a good-faith basis for all claims of confidentiality. Claims without such a basis may result in sanctions against the party making the unfounded claim. A party's public disclosure of information that it has designated as Allegedly Confidential may indicate that the party lacked a good-faith basis for that designation.

SO ORDERED.

Dated at Montpelier, Vermont, this 26<sup>th</sup> day of September, 2008.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: September 26, 2008

ATTEST: s/Judith C. Whitney  
Deputy Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*